STRAITS SETTLEMENTS REPORTS.

EXTRA ASSISTANT CONTROLLER OF LABOUR FOR AND ON BEHALF OF BALAKRISHNAN vs. PASKOE'S LTD.

[App. Civil Juris. (Worley, J.) September 30, 1941]

Labour Ordinance Section 8, 9 and 42 — Presumption that agreements entered into by a labourer are on a monthly basis — Notice of dismissal — Practice.

Section 8 (3) of the Labour Ordinance provides that all agreements for employment which a labourer may enter into shall, in the absence of proof to the contrary be presumed to be for a period of one month. The defendants, who had dismissed the plaintiff without notice, relied on the plaintiff's admission that he was engaged on a daily wage, the absence of any specific terms of employment and the evidence that labourers in the factory habitually left or were dismissed without giving or receiving notice, a practice which must have been known to the plaintiff.

Held, that the burden of proof will lie on the party seeking to displace the presumption under Section 8 (3) of the Labour Ordinance; that on the facts of this case, there was nothing to displace the presumption; and therefore that the plaintiff was entitled in the absence of any allegation of misconduct to one month's notice or wages in lieu thereof.

Section 42 (2) of the Labour Ordinance authorises the Controller of Labour to institute proceedings for and in the name of a labourer or labourers. The correct practice would be therefore to intitule the action in the name of the labourer or labourers as plaintiff or plaintiffs "by the Controller of Labour."

REVISION.

J. T. Handy (Extra Assistant Controller of Labour) in person.

Dr. Withers-Payne for the defendants.

Worley, J.—This was a claim for wages in lieu of notice brought by the Extra Assistant Controller of Labour, under section 42 (1) of the Labour Ordinance, for and behalf of one Balakrishnan, a labourer within the meaning of that Ordinance. The claim was based on subsections (3) and (4) of section 8.

The Assistant District Judge, Singapore, dismissed the claim, but on further consideration came to the opinion that his Order was wrong and forwarded the record to the High Court for revision. I heard the matter in Chambers in order to avoid expense to the parties, and after hearing Dr. Withers-Payne for the defendant in the suit and Mr. Handy, the Extra Assistant Controller of Labour, I gave oral judgment setting aside the Order of the Assistant District Judge and ordering that judgment be entered for the plaintiff in the sum of $22.80 and costs $1/-.

I have since been asked to give a written judgment on the ground that this decision is of considerable importance to the Labour Department and I accordingly do so, although it is merely a decision on the facts of this particular case.

Balakrishnan, who, for convenience, I refer to as the plaintiff, was employed by the defendants as a lorry driver from December 1935 up to 1st May 1941. He was paid all wages due up to and including the 1st of May 1941 and dismissed without notice on that day.

The plaintiff's evidence was that when he was engaged by the defendants no express arrangement was made as to the terms of his employment. He was originally engaged at 80 cents per day, subsequently increased to 95 cents per day, and was paid monthly, signing for his wages on a monthly pay-sheet. He stated that he expected to receive one month's notice on dismissal and that if he wished to leave he would have given the defendants one month's notice. He admitted that he would not be paid for days on which he did not work, that he was engaged on a daily wage and that to his knowledge labourers employed by the defendants had from time to time left without giving notice.

For the defendants, the only evidence was that of an accountant and bookkeeper who swore that when labourers wished to leave the employment they were permitted to do so immediately and that defendants' practice, if they wished to dismiss a labourer, was to call him up and pay him off up to and including the day of dismissal. He admitted that there was no notice in the defendant's factory that the labourers could leave without notice or that they could be dismissed without notice.

On this the Assistant District Judge found as a fact that the plaintiff was employed on a daily contract and was not entitled to more than one day's notice or one day's wages in lieu. I do not think this finding can be supported having regard to the provisions of sections 8 and 11 of the Labour Ordinance.

Sub-section (1) of section 8 restricts the period of an agreement which a labourer may enter into and sub-section (3) provides that all agreements shall in the absence of proof to the contrary be presumed to be for a period of one month. The burden of proof will lie on the party seeking to displace the presumption, in this case, the employer. The defendants relied upon the plaintiff's admission that he was engaged on a daily wage, the absence of any specific terms of

employment and the evidence that labourers in the factory habitually left or were dismissed without giving or receiving notice, a practice which must have been known to the plaintiff.

I do not think there is anything in these facts to displace the presumption. Payment of wages once a month is strong evidence that the agreement was for a period of one month and the fact that wages were reckoned at a daily rate is quite consistent with such an agreement. Sub-section (4) of section 8 clearly contemplates agreements of this type, and throws upon the employer in such a contract the burden of providing suitable work up to an aggregate of 24 days in each month or of paying the labourer wages up to an aggregate of 24 days.

In my view, the plaintiff's admission that he was engaged on a daily wage merely meant that his wages were to be calculated at a daily rate and is not sufficient to displace the statutory presumption.

Under section 9 either party to an agreement for a period of time, who wishes to terminate it, is bound to give the prescribed notice of such intention to the other party. The fact that this provision has been consistently broken by the defendants and by their employees appears to me to be irrelevant when, as in such a case as this, an employee wishes to take advantage of his rights under the law.

Mr. Handy also pointed out that if, in fact, the plaintiff's agreement was from day to day then the defendants have consistently broken section 10 of the Ordinance by paying him his wages once a month instead of daily or weekly.

No reason has been adduced by defendants for the dismissal and there being no allegation of misconduct on the part of the plaintiff he is entitled, under the provisions of section 12, to the maximum amount of wages the employer is bound to pay under section 8 (4).

My decision involves no hardship on the defendants for if they wish to engage labourers on daily agreements they can do so either by making specific agreements with their employees or by posting adequate notices in the factory to that effect.

There is a point of practice arising out of this suit to which I should draw attention. The action was brought by the Extra Assistant Controller of Labour as plaintiff for and on behalf of the labourer, whereas subsection (2) of section 42 authorises the Controller to institute proceedings "for and in the name of" a labourer or labourers. This might be of importance if the defendants in such a suit should secure an order for costs to be paid by the plaintiff. In my view the correct practice would be to intitule the action in the name of the labourer or labourers as the plaintiff or plaintiffs "by the Controller of Labour" in the same way as an infant sues or defends in his own name by his next friend or guardian. If the Controller institutes proceedings in his own name as plaintiff and is unsuccessful he may find himself made liable for the costs.

Order accordingly.

F. M. S. REPORTS.

FATIMAH BEE ALIAS BATCHA AMMAL vs. MOHIDEEN BATCHA, ATTORNEY OF SHAIK DAWOOD.

[App. Civil Jurisdiction (Terrell, Ag. C.J., F.M.S., McElwaine, C.J., S.S. and Aitken, Ag. J.A.) May 19, 1941]

Probate and Administration Enactment (Cap. 8) Sections 67, 77 and 85 — Rules for Non-Contentious Business, Rule 65 — Rules for Contentious Business, Rule 13 — Application for Letters of Administration — Caveat — Caveat warned — Appearance entered — Form of Appearance — Whether contentious suit commenced by entry of appearance — Whether Court has jurisdiction thereafter to grant Letters of Administration — Whether Court has jurisdiction to grant Letters of Administration if no estate exists in the Federated Malay States.

Petitioner applied for Letters of Administration of the estate of his mother. It did not appear that his mother had any estate in the Federated Malay States other than her share of her late husband's estate which she had purported to dispose of by deed of gift, shortly before her death to her daughter, Batcha Ammal. Petitioner wished to obtain Letters of Administration in order to dispute the validity of that gift. Batcha Ammal, the daughter, filed a Caveat. The Caveat was warned and an appearance was thereupon entered for Batcha Ammal. The appearance was not in the form provided in Rule 13 of the Rules for Contentious Business. Letters of Administration were nevertheless granted to the petitioner, the learned Judge holding that the Court had jurisdiction so to do as a contentious suit had not then commenced and the caveator had notice of the application.

Held, on appeal, reversing the decision of Gordon Smith, J.

(a) that a contentious suit had commenced as soon as appearance of the warning had been issued and that the Court had therefore no jurisdiction to grant Letters of Administration on the petition; and